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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 757

FRANK DELAY, HARRY ARNOLD (TRUE NAME HENRY ARMEL), *Appellants*,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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Deputy District Attorney,
Of Counsel.

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COME Now the People of the State of California, Appellee herein, and file this their Statement Disclosing Matters and Grounds Making Against the Jurisdiction of This Court, as asserted by Appellants.

Appellants' *Statement as to Jurisdiction*, among other things declares: ". . . that the unconstitutionality of the statutes was first raised by demurrer to the complaint. The demurrer was overruled and the matter tried. After conviction, and on appeal to the above court, defendants-appellants' only two contentions were that the statutes were unconstitutional and were being unconstitutionally applied to these defendants in violation of the Fourteenth Amendment to the Federal *Constitution. The judgment of*

the court affirmed the conviction without written opinion, hence sustaining the validity of the statutes." (Emphasis added: Appellants' Statement of Jurisdiction, P. 2, lines 29-34; P. 3, lines 1-5.)

From the above statement it appears that the judgment was affirmed without a written opinion. The Judges of the Appellate Department shall not be required to write opinions in any case decided by them, but may do so whenever they deem it advisable or in the public interest. (App. Dept. Rule 6, 26 Cal. 2d P. 6.)

Where the highest court of the State delivers no opinion and it appears that the judgment "might" have rested upon a nonfederal ground, this court will not take jurisdiction to review the judgment, when the question of the existence of an adequate state ground is debatable. (*Stembridge* v. *Georgia* (1952), 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834.)

WHEREFORE, appellee respectfully submits that the above statement asserts sufficient grounds making against the jurisdiction of this court and that the accompanying motion to dismiss, or, in the alternative, the motion to affirm should be granted.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General,
FRANK J. MACKIN,
Assistant Attorney General.
Attorneys for Appellee.

S. ERNEST ROLL,
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JEREMIAH J. SULLIVAN,
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Motion to Dismiss and alternatively, if said motion be denied, Motion to Affirm

COME Now the People of the State of California, Appellee herein, and move the Court to dismiss the within appeal upon the following ground:

The assignment of errors are too general and do not set out separately and particularly each error asserted (U. S. Sup. Ct. Rule 9). The following are the asserted assignments of error.

The Superior Court of the State of California in and for the County of Los Angeles, Appellate Department, erred:

1. In holding that Sections 20880, 20882, 20883, 20884, 20885 and 20886 of the Business and Professions Code of the State of California are valid and constitutional.

2. In holding that the named sections are not being unconstitutionally applied so as to deprive Appellants of their property without due process of law, when applied to a sign reading: "Serve Yourself and Save".

The first assignment of error does not set forth whether the error rested upon a federal or nonfederal ground, nor can it be ascertained wherein or for what reasons the court erred in holding the code sections valid.

The second assignment of error does not set forth whether the error rested upon a federal or nonfederal ground, nor can it be ascertained how or in what manner the court erred in holding that the code sections were not unconstitutionally applied so as to deprive the Appellants of their property without due process.

The assignments of errors are so general that they present no question for consideration and may be disregarded by the Court. (*Seaboard Airline Ry. Co.* v. *Watson* (1932), 287 U. S. 86.)

WHEREFORE, Appellee respectfully moves the Court to dismiss the appeal herein because no substantial constitutional question is presented.

In the event the aforesaid motion to dismiss be denied, Appellee further moves the Court to affirm the judgment of the Superior Court of the State of California in and for the County of Los Angeles Appellate Department, because the law and the rules of court pertaining to forms of assignment of errors are not complied with. (*Seaboard Air-line Ry. Co.* v. *Watson, supra.*)

WHEREFORE, Appellee respectfully moves the Court to affirm the judgment of the Superior Court.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General,
FRANK J. MACKIN,
Assistant Attorney General,
Attorneys for Appellee.

S. ERNEST ROLL,
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